

Remarks/Arguments

According to the Office Action mailed on June 2, 2006, Applicants were request to elect, for examination in the present application, one of the following inventions:

Group I: Claims 1-22, drawn to methods of identifying a tumor as responsible to an anti-Her-2 antibody, comprising detecting heterodimerization of Her-2;

Group II: Claims 26-28, 50-52, and 71-73, drawn to methods of identifying a tumor as responsive to an anti-Her-2 antibody, comprising detecting ErbB phosphorylation;

Group III: Claims 29 and 53, drawn to methods of identifying a tumor as responsive to an anti-Her-3 antibody, comprising detecting ErbB phosphorylation.

Group IV: Claims 30 and 54, drawn to methods of identifying a tumor as responsive to an anti-Her-1 antibody, comprising detecting ErbB phosphorylation.

Group V: Claims 31 and 55, drawn to methods of identifying a tumor as responsive to an anti-Her-4 antibody, comprising detecting phosphorylation.

Group VI: Claims 32-39 and 56-63, drawn to methods of identifying tumor as responsive to an antibody that inhibits the association of Her-2 with another ErbB receptor, comprising detecting ErbB phosphorylation and Her-2 heterodimerization.

Group VII: Claims 74, 75 and 84-88, drawn to methods of treating a tumor, which has been determined to comprise a phosphorylated ErbB receptor, with an antiHer-2 antibody.

Group VIII: Claims 76-79, drawn to methods of treating a tumor, which has been determined to comprise Her-2 heterodimers, with an anti-Her-2 antibody.

Group IX: Claims 80-83: drawn to articles of manufacture comprising an anti-Her-2 antibody.

The invention of Group II, claims 26-28, 50-52, and 71-73 is hereby elected, with traverse.

None of the groups listed in the Office Action include claims 23-25, 40-49, and 64-70. However, on page 3 of the Office Action these claims are indicated as claims linking inventions II-V. It is further explained that “[u]pon the allowance of the linking claims, the restriction

requirement as to the linked inventions shall be withdrawn and any claims depending from or other wise including all the limitations of the allowable linking claims will be entitled to examination in the instant application. Accordingly, the present election of the invention of Group II is made with the understanding that (1) claims 23-25, 40-49, and 64-70 will be examined along with the other claims of this group, and (2) if claims 23-25, 40-49, and 64-70 are found allowable, the claims of Groups III-V will be reunited with the claims of Group II.

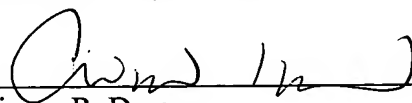
Applicants further submit that the claims of Group VII (claims 74, 75 and 84-88) are closely related to the claims of Group II (and Groups III-V), since the claimed treatment method is based on the presence of a phosphorylated ErbB receptor. Furthermore, claims 74 and 75, listed in Group VII depend from claim 71 listed in Group II. Since the Examination of the Group VII claims along with the claims of Group II would not place any significant burden on the Examiner, and would improve the efficiency of examination, the withdrawal of the Restriction Requirement with regard the Group II and Group VII is respectfully requested.

The present application is believed to be in *prima facie* condition for allowance, and an early action to that effect is respectfully solicited.

Although no fees are believed to be due at this time, please charge any fees, including any fees for extension of time, or credit overpayment to Deposit Account No. 08-1641 (Attorney Docket No.: 39766-0114A).

Respectfully submitted,

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